

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Abdullah :
v. : No. 3:02cv1030(JBA)
United States :

Ruling on Defendant's Motions to Dismiss [Docs. ##12, 17]

Plaintiff commenced this suit against the United States in the Connecticut Superior Court, seeking reparations for slavery. The United States removed the case to this Court, invoking 28 U.S.C. § 1442(a)(1),¹ and has moved to dismiss the complaint as barred by the doctrine of sovereign immunity. Plaintiff objects, arguing the merits of his claims and citing Obadele v. United States, 52 Fed. Cl. 432 (2002).

"The United States, as sovereign, is immune from suit save as it consents to be sued, and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." United States v. Sherwood, 312 U.S. 584,

¹"A civil action or criminal prosecution commenced in a State court against any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending: (1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, sued in an official or individual capacity for any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue."

586 (1942) (citations omitted); accord SEC v. Credit Bancorp, Ltd., 297 F.3d 127, 136-137 (2d Cir. 2002). Most of the statutes invoked by plaintiff as a source of jurisdiction, see Am. Compl. [Doc. #15] at 2, are inapplicable or otherwise fail to confer jurisdiction over the United States in this suit:

(1) 42 U.S.C. §§ 1983 and 1985 and 28 U.S.C. § 1343 are inapplicable because the United States is not a "person" under these statutes, no allegation is made of action under color of state (as opposed to federal) law, and no claim is made under a statute of the United States, see District of Columbia v. Carter, 409 U.S. 418, 424-425 (1973);

(2) 28 U.S.C. § 1357 provides federal jurisdiction for injuries incurred in enforcing federal laws for collection of revenue or enforcement of voting rights, and is thus not applicable to plaintiff's claims, cf. New York State Association of Trial Lawyers v. Rockefeller, 267 F. Supp. 148, 150 n.1 (S.D.N.Y. 1967);

(3) The declaratory judgment provisions of 28 U.S.C. §§ 2201 and 2202 do not operate to confer jurisdiction because their operation is procedural only and does not extend the jurisdiction of the federal courts,

Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S.

667, 671 (1950);

(4) 28 U.S.C. § 2416 contains provisions governing actions brought by the United States, not against the United States; and

(6) The provisions contained in the Connecticut General Statutes are inapplicable to the question of the United States' sovereign immunity in this case.

In addition to the provisions discussed above, plaintiff invokes provisions of the Federal Tort Claims Act ("FTCA"), see Am. Compl. [Doc. #15] at 2 (citing 28 U.S.C. §§ 1346 and 2674), under which certain claims sounding in tort may be brought against the United States. However, the waiver of immunity under the FTCA, which can be neither broadened nor contracted by the Court, see United States v. Kubrick, 444 U.S. 111, 117-118 (1979), is subject to a jurisdictionally-prerequisite exhaustion requirement, see 28 U.S.C. § 2675, with which plaintiff has presented no evidence of complying.²

Plaintiff's citation of Obadele v. United States, 52 Fed.

²Compliance with the administrative exhaustion requirement would by no means ensure success on the merits of plaintiff's claim, as other FTCA requirements, including the FTCA's statute of limitations, 28 U.S.C. § 2401(b), would pose hurdles to any possible recovery under plaintiff's legal theory.

Cl. 432 (2002), is unavailing, as the subject matter jurisdiction question presented in that case was whether the U.S. Court of Federal Claims had jurisdiction over the claims brought under a specific statute: the Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903. The African-American claimants in Obadele had standing to pursue their claims because the statute under which those claims were brought provided for judicial review in the Court of Federal Claims of a denial of a request made for compensation under the statute. 52 Fed. Cl. at 437. Here, plaintiff does not appear to seek redress under any specific statute other than the FTCA (discussed above), and thus Obadele is inapposite.

In the absence of a waiver of the United States' sovereign immunity, plaintiff's claim cannot be brought in this Court. The motions to dismiss [Docs. ##12 & 17] are GRANTED. The Clerk is directed to close this case.

IT IS SO ORDERED.

/s/

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut, this 25th day of March, 2003.